O/ccy/49

1949 K **File No.** G12/49

Legal Deptl.

G **BRANCH**

Subject:— Opinions on the cases under the cotton cloth and yarn control order 1945

1949

File No. O/ccy/49

Gen. 194

G12/49

C O N T E N T S.

Legal Department File No.O/CCY/49.

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		Opinions under the Cotton Cloth and Yarn Control Order, 1945	
1.	G/161/18.2.1949.	Whether the action of the Police in closing the case against M/s. Mulchand Chandrabhan from whose godown a stock of 33 bales meant for export was seized by the Police, is in order.	1-6 (copies not made)
2.	G/430/28.6.49	-do- -do- Prosecution of Messrs. Madon Commercial Corpn.	7-10
3.	G/195/7.3.1949	Clause 18C(1)(a) and 23 Prosecution of Mr. Mohomed Sakir Abdul Sallar, President Malegaon City Congress Committee and others for purchase of Power looms without obtaining permission of the Textile Commissioner	11-12 (copies not made)
4.	G/371/16.5.1949	Whether prosecution pending in the Court of the R.M.F.C. Pimpalgaon (Nasik Distt) against one Mr. Baban Trimbak a hawker under clause 12(1) under 1943 order should be withdrawn.	13-16 (copies not made)
5.	G/663/22.11.1949	Whether M/s. Shanmukh Dyeing Co. of Sholapur can be held liable under clause 12(1) for selling yarn to the bogus customer on 6.5.47 and also under clause 3 of the Bombay Cotton Yarn Trade Regn Regulation Order, 1946 for dealing in yarn without a license	17-22 (pp.17-20 not copies)

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The first question concerns the prosecution in respect of three bales held by the accused M/s. Mulchand Chandrabhan on behalf of Mukti Hotchand. The R.L.A. held in his opinion No.G-161 dated 18th February 1949 that the onus was on the defence to prove the mistake as contended by them that the three bales belonging to one Suleman were by mistake dispatched in the quota of Mukti Hotchand. With reference to this the Police Prosecutor states that the mistake is of fact and not of law and as such the onus would not be shifted on to the accused in pursuance of Section 15 of the Essential Supplies (Temporary Powers) Act.

The Police Prosecutor's view is not co rect. What the prosecution has to prove in this case is that these time.barred bales were held by the accused without a valid export permit or under any other valid authorisation. The onus is on the defence to prove under Section 15 of the Essential Surplies (Temporary Powers) Act that there was a valid export permit in respect of these bales. If bales belonging to somebody else were exported, and these three bales remained behind through any mistake, this fact being in the special knowledge of the accused, the burden of proving that fact is on him (Section 106 of the Indian Evidence Act). The defence in this case does not come under the general exceptions in the Indian Penal Code, but even the burden of proving that the case comes under the exceptions is on the accused. (Section 105 of the Indian Evidence Act). The R.L.A. therefore adheres to the view expressed in his opinion No.G-161 dated 18th February 1949 regarding the feasibility of prosecution of M/s. Mulchand Chandrabhan.

As regards the 2nd point, viz., the prosecution of M/s. Madon Commercial Corporation, the Police Prosecutor says that M/s. Madon Commercial Corporation were in correspondence with the authorities concerned which means that the authorities were aware of the existence of these time barred bales and by not calling upon the party to get them T.C.B. marked, it could be taken as implied consent of the authorities for keeping the goods. This view is not correct. There is a statutory liability on the holder of the time-barred goods to get them T.C.B. marked and there is no obligation on the authorities to call upon them to get the goods so marked even if the authorities become indirectly aware of such stock. The Export Trade Controller's Circular No.1508 dated 11th September 1947 does not give any further time to the exporters as stated by the Police Prosecutor in his previous opinion, but on the contrary it was a warning to the exporters and others in respect of holding such time-barred stock not covered by any valid export licence.

As pointed out in R.L.A's opinion No.G-449 dated 15th June 1949, the R.L.A's opinions should be treated as final and should be acted upon.

Sd/- P.N.Lad,
Remembrancer of Legal Affairs.

U.R. to P.T.C. No.G/480, dated 28.6.49.

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Office of the R.L.A.

The offence took place on 6.5.47 when the Cotton Cloth and Yarn (Control) Order, 1945, was in force. In clause 3(c) of the said Order "manufacturer" has been defined as follows:- "manufacturer" means "a person engaged in the production of cloth or yarn or both, including any process ancillary to such production like dyeing, bleaching, embroidering, printing and finishing and 'manufacture' shall be construed accordingly." Had the definition stated that 'manufacturer' means a person etc. and includes also any person engaged in any process etc., no scope would have been left for the kind of doubt expressed by the Public Prosecutor, Sholapur. However, even as the definition stands the word "manufacturer" would be applicable to a person engaged in any process ancillary to such production like dyeing etc. The effect of the work 'including' is not to require that a person must engage in the ancillary process in addition to the main process of production. So long as the person is engaged in any process ancillary to production, it would suffice to bring him within the scope of the extended part of the definition. This interpretation has all along been accepted in construing this order. The view taken by the Dy. P.T.C. in his note dated 20.10.49 at p. 8 ante is, therefore, correct.

2. The term 'dealer' is defined in clause 2(b) of the Bombay Cotton Yarn Trade Regulation Order, 1946 to mean 'a person carrying

on the business whether as principal or agent of buying or selling, whether wholesale or retail or storing for sale yarn whether or not in conjunction with any other business but does not include a manufacturer. The definition of 'manufacturer' in this Order is identical to that in the Cotton Cloth & Yarn (Control) Order, 1945, and as Messrs. Shanmukh Dyeing Co., are manufacturers they are not dealers. Besides in the absence of evidence to prove that they are carrying on the business of selling yarn etc., they cannot be termed dealers only in respect of one such transaction. Prosecution for breach of clause 3 of the Bombay Cotton Yarn Trade Regulation Order, 1946 is, therefore, not feasible.

Sd/- P.N.Lad,
Remembrancer of Legal Affairs.

U.R. to P.T.C. No.G.663 dated 22nd November 1949.

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